

HARRY L. SAMUEL, )  
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 Plaintiff, )  
 )  
 v. ) Civil Action No. 01-722-SLR  
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 ROBERT SNYDER, P. WILLIAM, )  
 R. SPISAK, and LT. REYNOLDS, )  
 )  
 Defendants. )

Presently before the court is plaintiff's letter motion which the court construes as a motion for reconsideration pursuant to Fed. R. Civ. P. 60(b). (D.I. 20) Plaintiff Harry L. Samuel is a pro se litigant who is presently incarcerated at the Delaware Correctional Center ("DCC") located in Smyrna, Delaware. His SBI number is 201360. He filed this action pursuant to 42 U.S.C. § 1983 and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

Plaintiff raises two separate Fourteenth Amendment claims in his complaint. First, plaintiff alleges that defendants Williams and Spisak filed "false charges" against him, after a confrontation regarding plaintiff's identification badge. (D.I. 2 at 3) As a result of the "false charges," plaintiff alleges that he was placed in "the hole" for 15 days and then reclassified to the Security Housing Unit ("SHU"). (Id.)

Second, plaintiff alleges that the hearing officer, defendant Reynolds, violated his right to due process by incorrectly noting on the hearing decision that plaintiff did not wish to appeal. (Id.) Plaintiff alleges that although defendant Reynolds only found him guilty of one disciplinary violation, he told defendant Reynolds that he wanted to appeal the decision. Plaintiff also alleges that he completed an appeal form, which he filed "as directed". (Id.) Finally, plaintiff alleges that rather than receiving a response to his appeal, he received an order executing the sanction imposed which indicated that he did not wish to appeal. (Id.) Plaintiff requests that the court issue a declaratory judgment finding that each of the defendants has violated his Fourteenth Amendment right to due process. Plaintiff also requests that the court issue an injunction, ordering the defendants to reclassify him. On September 27, 2002, the court dismissed plaintiff's claims as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).<sup>1</sup> (D.I. 19) Plaintiff filed the pending letter motion for reconsideration on October 4, 2002. (D.I. 20)

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<sup>1</sup> The court also denied plaintiff's motion for appointment of counsel (D.I. 10) as moot. In his letter motion, plaintiff also argues that he did not intend to file the motion for appointment of counsel in this case. (D.I. 20) Rather, plaintiff maintains that he has two cases in this court and he intended to file the motion in his other case. (Id.) The court notes however, that plaintiff had no other cases pending in this court at the time he filed the motion for appointment of counsel.

"As a general rule, motions for reconsideration should be granted 'sparingly.'" Stafford v. Noramco of Delaware, Inc., No. 97-376-GMS, 2001 WL 65738 at \*1 (D. Del. Jan. 10, 2001) (citing Karr v. Castle, 768 F.Supp. 1087, 1090 (D. Del. 1991)). The Third Circuit has noted that the purpose of a motion for reconsideration is to "correct manifest errors of law or fact or to present newly discovered evidence." Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999) (citing North River Ins. Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995)). Furthermore, the purpose of the motion for reconsideration is not to "rehash arguments already briefed." Dentsply Int'l. Inc. v. Kerr Mfg. Co., 42 F.Supp.2d 385, 419 (D. Del. 1999). Consequently, in order to succeed on the motion, plaintiff must show that at least one of the following criteria applies: (1) a change in the controlling law; (2) availability of new evidence not available when the court made its decision; or (3) need to correct a clear error of law or fact or to prevent manifest injustice. See Skretvedt v. E.I. Dupont de Nemours and Co., No. 98-61-MPT, 2000 WL 33341051 at \*4 (D. Del. October 31, 2000) (citing Max's Seafood Café, 176 F.3d at 677)). In his motion, plaintiff merely re-alleges the same claims he raised in the complaint. Plaintiff has not alleged a change in the controlling law, offered new evidence not available when the court made its decision, or shown the need to correct a

clear error of law or fact or to prevent manifest injustice. See id. Therefore, the court shall deny the motion for reconsideration. See Dentsply Int'l. Inc. v. Kerr Mfg. Co., 42 F.Supp.2d 385, 419 (D. Del. 1999).

Finally, plaintiff requests that the court refund a portion of the filing fee stating, "[i]f I can't have my first payment back what about the other payments?" (D.I. 20) To the extent that plaintiff is requesting a refund of the money he has paid toward the filing fee, his request shall be denied pursuant to 28 U.S.C. § 1915(b). See also Goins v. Decaro, 241 F.3d 260 (2d Cir. 2001) (prisoner withdrawing appeal is not entitled to refund of partial payments).

NOW THEREFORE, IT IS HEREBY ORDERED this 13th day of May 2003, that:

1. Plaintiff's letter motion for reconsideration (D.I. 20) is DENIED.
2. Plaintiff's request for a refund of the filing fee is DENIED.
3. The clerk of the court shall cause a copy of this order to be mailed to plaintiff.

Sue L. Robinson  
UNITED STATES DISTRICT JUDGE